



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Conway School District

Petitioner

v.

Conway Education Support Personnel,
NEA-New Hampshire
(On behalf of Joseph Lopez)

Respondent

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Case No. M-0560-7¹

Decision No. 2005-042

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Conway School District ("the District") filed a Petition for Declaratory Ruling on January 19, 2005, seeking a decision from the Public Employee Labor Relations Board (PELRB) on whether a certain individual is eligible for health insurance benefits under the terms of the parties' collective bargaining agreement ("CBA"). More specifically, the District alleges that Mr. Joseph Lopez, employed as an aide, was laid off on June 22, 2004 due to a reduction in personnel. The District states that five days earlier Mr. Lopez had been mailed a termination notice and a form for extension of health benefits pursuant to RSA 415:18 and COBRA. Mr. Lopez thereafter returned the form to the District on July 1, 2004, indicating therein his request to receive COBRA benefits. However, as alleged by the District, Mr. Lopez later indicated on August 11, 2004 (via telephone) and August 16, 2004 (via written letter) that he was retiring in order to keep his health insurance benefits under the CBA. Although the parties' CBA provides that retiring employees who have worked for the District for at least ten (10) years will be eligible for the health insurance benefits available to active employees, the District states that Mr. Lopez was neither a member of the bargaining unit, nor an employee of the District at the time he retired. The District therefore asks the Board to determine under the circumstances whether or not Mr. Lopez is eligible for contractual health benefits. Since to date it has agreed to provide health insurance to Mr. Lopez, with a full reservation of rights, it also asks the Board to determine who is responsible for the premiums paid to the date of the Board's declaratory ruling.

The Conway Education Support Personnel, NEA-New Hampshire ("the Association") filed an answer to the petition on behalf of Mr. Lopez on February 7, 2005. At the outset, the Association submits that the CBA draws a clear distinction between layoffs and terminations, and that Mr. Lopez was laid off, not terminated. In fact, as described by the Association,

¹ Please note amended case caption and case number.

employees such as Mr. Lopez are eligible for recall for up to a year and do not lose any seniority. Since Mr. Lopez has more than ten (10) years employment with the District, the Association asserts that he is therefore eligible for the health insurance plan under the parties' CBA. It also states that because the CBA does not restrict the right of employees to retire, the District should not be able to impair that right by unilaterally treating Mr. Lopez as "terminated" when the facts establish that he was not terminated. It also points out that Mr. Lopez has filed a grievance contesting his layoff and that he believes he is eligible for recall. Accordingly, the Association maintains that Mr. Lopez has not waived any rights he has under the contract. Under the circumstances at hand, it requests that the Board deny the District's petition and rule that Mr. Lopez is entitled to insurance benefits as a retiree.

A pre-hearing conference was conducted at PELRB offices, Concord, New Hampshire, on March 16, 2005 before the undersigned hearing officer.

PARTICIPATING REPRESENTATIVES

For the Petitioner: Matthew H. Upton, Esquire

For the Respondent: James F. Allmendinger, Esquire

ISSUE FOR DETERMINATION BY THE BOARD

The parties stipulated to the following issue for determination by the Board:

In the instant circumstances, is Mr. Lopez entitled to receive health insurance benefits under the terms of the collective bargaining agreement as a retiree?

WITNESSES

In the event an evidentiary hearing is determined to be necessary, the parties identified the following persons as probable witnesses:

For the Petitioner:

1. Jim Hill, Director of Administrative Services
2. Carl Nelson, Superintendent
3. Jack Loynd, Principal

For the Respondent:

1. Jay Tolman, Uniserve Director, NEA-NH
2. Joseph Lopez

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each

party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Based upon discussions between the parties' counsel and the hearing officer at the pre-hearing conference, it is anticipated that the parties will be stipulating to the submission of all relevant documents. However, both parties reserve the right to amend the list of exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02.

LENGTH OF HEARING

If a hearing is ultimately determined to be necessary, the time being set aside for its completion will be a maximum of three (3) hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least fifteen (15) days prior to the date of the evidentiary hearing.

DECISION

1. Upon discussion between the parties' representatives and the hearing officer during the pre-hearing conference, and the recognition that the instant petition for declaratory ruling primarily presents a question of law, the parties are directed to use best efforts in reaching their factual stipulations and thereby avoid the need for an evidentiary hearing in this matter.
2. It was stipulated that the parties' representatives shall meet, or otherwise confer, on or before **April 7, 2005**, in order to compose a mutual statement of agreed facts (with appropriate reference to any attached exhibits). The parties' representatives shall also notify the PELRB on or before **April 7, 2005** as to whether or not a hearing is desired in this matter. (In the interest of expediting the instant matter, a hearing date is reserved below. However, failure to notify the PELRB by **April 7, 2005** will result in its' cancellation).
3. Upon reaching agreement on sufficient facts, the parties' representatives shall both execute the "Statement of Agreed Facts" and file said document with the PELRB on or before **April 12, 2005**, along with their respective memorandums of law. Upon receipt of these documents, the record shall be deemed closed and a decision shall issue based solely upon the file documents, stipulated facts and the parties' legal memoranda, unless it is determined by the PELRB that a hearing is necessary prior to a final determination on the petition.
4. In the event that the parties are unable to reach agreement on a mutual statement of agreed facts in order to avoid the need for a hearing, then they shall memorialize

those facts upon which they can so stipulate and file that document with the PELRB no later than **April 12, 2005**.


5. Upon request of a party for a hearing, or in the event the PELRB determines that a hearing is necessary, the party representatives shall forward any amendments to, or deletions from, their Witness lists as specified above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall also forward their list of exhibits to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
6. Subject to the aforementioned directives, an evidentiary hearing is presently scheduled in this matter for:

TUESDAY, APRIL 26, 2005 at 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 21st day of March, 2005.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Matthew H. Upton, Esquire

James F. Allmendinger, Esquire